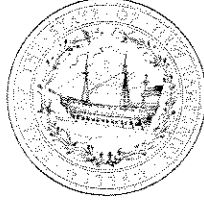


ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE  
ATTORNEY GENERAL



~~MICHAEL A. DELANEY~~  
~~DEPUTY ATTORNEY GENERAL~~

February 27, 2006

**HAND-DELIVERED**

Clerk of Court  
Julie W. Howard, Clerk  
Strafford County Superior Court  
County Farm Road  
P.O. Box 799  
Dover, NH 03820

RE: State of New Hampshire et al. v. Waste Management of New Hampshire, Inc.

Dear Ms. Howard:

I enclose for filing the following:

1. Petition for Preliminary and Permanent Injunction and Civil Penalties; and
2. Three (3) originals of the Consent Decree with Exhibits (one for the Court and one for each party).

This matter has been settled by agreement, as reflected in the enclosed Consent Decree. Counsel for Waste Management, Gregory H. Smith, and I respectfully request that this matter be presented to the Court for approval and that we receive telephone notice upon approval. If you have any questions, please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script that reads "Maureen D. Smith".

Maureen Smith  
Senior Assistant Attorney General

cc: Gregory H. Smith, Esq.

**THE STATE OF NEW HAMPSHIRE**

**Strafford Superior Court**

Justice & Admin Building  
County Farm Road / Box 799  
Dover, NH 03820  
603 742-3065

**NOTICE OF DECISION**

MAUREEN SMITH ESQ  
OFFICE OF ATTORNEY GENERAL - DES  
33 CAPITOL ST  
CONCORD NH 03301-6397

**06-E-0058 STATE OF NH - DES VS. WASTE MANAGEMENT OF NH INC.**

Please be advised that on 2/28/2006 Judge FAUVER made the following order relative to:

**Consent Decree ; Approved**

**SEE ATTACHED**

03/01/2006

Julie W. Howard  
Clerk of Court

cc: ~~WASTE MANAGEMENT OF NEW HAMPSHIRE INC.~~  
GREGORY SMITH ESQ.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

Docket No. \_\_\_\_

State of New Hampshire Department of Environmental Services

v.

Waste Management of New Hampshire, Inc.

**CONSENT DECREE**

**A. INTRODUCTION**

1. Petitioner, the New Hampshire Department of Environmental Services, by and through its counsel, the Attorney General (hereinafter "State"), and the Respondent, Waste Management of New Hampshire, Inc. (hereinafter "WMNH"), represented by its counsel, McLane, Graf, Raulerson & Middleton, P.A., hereby agree to the terms and conditions set forth in this Consent Decree (hereinafter "Decree" or "Consent Decree"), as ordered by the Superior Court of Strafford County, in settlement of the alleged air, solid waste and groundwater violations asserted by the State in the Petition for Preliminary and Permanent Injunctive Relief and Civil Penalties ("Petition") filed with the Court simultaneously with this Consent Decree.

2. This Consent Decree resolves the violations alleged in the State's Petition through the date of entry of the Decree; in particular, violations of federal and state air pollution control laws, including provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and rules and permits issued thereunder for which the State has received delegated enforcement authority; New Hampshire's Air Pollution Control Laws, RSA ch. 125-C and the New Hampshire Air Toxic Control Act, RSA ch. 125-I and rules and permits issued thereunder; New Hampshire's Solid Waste Management Act, RSA ch. 149-M and rules and permits issued thereunder; and the New Hampshire Groundwater Protection Act, RSA ch. 485-C and rules and permits issued thereunder.

The alleged violations relate to landfilling operations at the Turnkey Recycling and Environmental Enterprise Facility in Rochester, New Hampshire (hereinafter “Turnkey Landfill” or “Landfill”), which is owned and operated by WMNH. The Petition seeks injunctive relief in the form of compliance and demonstrations of compliance with applicable laws, rules and permits, payment of emission-based fees and assessment of civil penalties. The Petition is attached as Exhibit A herein.

3. The Petition alleges that WMNH has violated: (1) federal New Source Performance Standards enforced by the State by failing to collect landfill gases at a sufficient rate, failing to correct exceedances of methane and other emissions, failing to expand the landfill gas collection system in a timely fashion, failing to maintain cover integrity, failing to timely install sufficient density of gas collectors, failing to report exceedances and failing to properly monitor gas collection wells; (2) federal and State New Source Review (“NSR”) and Prevention of Significant Deterioration (“PSD”) regulations; (3) State air toxic emissions compliance demonstration requirements and, in particular, requirements relating to hydrogen sulfide emissions; (4) State air permits that limit annual and/or hourly emissions of carbon monoxide (“CO”), sulfur dioxide (“SO<sub>2</sub>”) and particulate matter (“PM”); (5) underreported SO<sub>2</sub> emissions and thus underpaid emissions-based fees; (6) State solid waste rules and permits regarding odors; and (7) limitations established in State Groundwater Release Detection permits.

4. WMNH is required to comply with all federal and State air, solid waste and groundwater laws and rules and permits issued thereunder at the Turnkey Landfill.

5. WMNH does not admit, and nothing in this agreement or its performance constitutes or should be interpreted as an admission of any facts or legal allegations in the Petition. The State and WMNH, wishing to avoid the expense of litigation, agree without adjudication of the facts or law, that settlement of this matter is in the public interest and that

entry of this Decree without further litigation is an appropriate way to resolve any dispute, and the parties consent to entry of this Decree.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

### **B. STATEMENT OF CLAIMS**

6. The Petition filed herein states claims upon which relief can be granted.

### **C. JURISDICTION AND VENUE**

7. This Court has jurisdiction over the parties and this action pursuant to RSA 125-C:15, RSA 125-I:8, II, RSA 149-M:15, IV and RSA 485-C:19, II. Venue is proper in Strafford County as the Landfill is located in Rochester, New Hampshire.

### **D. CIVIL PENALTIES AND SUPPLEMENTAL PROJECTS**

8. WMNH agrees to a total civil penalty of one million seven hundred fifty thousand dollars (\$1,750,000) in return for a complete release and full settlement of the violations alleged in the Petition relating to various environmental statutes, rules and permits at the Turnkey Landfill through the date of entry of this Decree. The civil penalty shall be satisfied through a combination of cash payments in the total amount of three hundred fifty thousand dollars (\$350,000) to the State and performance of certain Supplemental Environmental Projects ("SEPs") valued at one million four hundred thousand dollars (\$1,400,000), within the time frames and criteria set forth herein. No federal or State tax deductions may be taken with regard to the civil penalty.

9. WMNH shall make a cash payment to the General Fund of the State of New Hampshire in the amount of three hundred fifty thousand dollars (\$315,000) and a cash payment to the New Hampshire Department of Justice in the amount of thirty five thousand dollars (\$35,000) for partial reimbursement of attorneys' fees. The reimbursement for attorneys' fees shall be placed in escrow for environmental expenditures, including but not limited to

expenditures for training, investigation and legal resources. The cash payment of \$315,000 to the General Fund shall be made by certified check drawn in the name of "Treasurer, State of New Hampshire" and the cash payment of \$35,000 shall be made by certified check drawn in the name of "New Hampshire Department of Justice." Both payments shall be delivered by hand within thirty (30) days of the effective date of this Decree to the Attorney General's Office, Environmental Protection Bureau, 33 Capitol Street, Concord, New Hampshire 03301, ATTN: Senior Assistant Attorney General Maureen D. Smith. WMNH shall pay interest on any late payment, which interest shall accrue at a rate of 10% per annum (RSA 336:1).

10. State Supplemental Environmental Projects

a. Landfill Gas to Energy Project. In exchange for a credit of up to one million two hundred thousand dollars (\$1,200,000) towards any civil penalty that might have been imposed under paragraph 8, WMNH agrees to directly fund or to reimburse the University of New Hampshire ("UNH") for costs that would otherwise be incurred by UNH for its purchase and installation of equipment and fixtures necessary to harness landfill gases from the Turnkey Landfill for the purpose of generating energy for the UNH campus in Durham, New Hampshire (hereinafter "UNH Landfill Gas-To-Energy Project" or "Project"). WMNH's obligation to directly pay Project costs or to reimburse UNH for costs incurred or to be incurred shall arise upon submission by UNH to WMNH, with a copy to the State, of invoices or other documentation of costs of purchase and installation of equipment for the Project. WMNH shall pay UNH in the form of one or more checks or electronic transfers, with a copy to the State, within thirty (30) days of such request for payment.

b. Financial Assurance for Supplemental Environmental Projects. In order to guarantee payment of the obligation set forth in paragraphs 10.a. and 11 herein,

WMNH shall provide, maintain, and renew financial assurance acceptable in form and substance to the State, through an irrevocable letter of credit in the amount of one million four hundred thousand dollars (\$1.4 million), which shall be identical to Exhibit F attached hereto and which shall name the State as beneficiary. The financial assurance shall be established within two (2) days of the effective date of this Decree and failure to do so shall be deemed a violation of this Decree. If WMNH fails to timely pay or to reimburse UNH under paragraph 10.a. herein for costs incurred or to be incurred through the UNH Landfill Gas-To-Energy Project, fails to fund local projects under paragraph 11 herein or fails to maintain or timely renew the irrevocable letter of credit, the State may draw on the financial assurance for unpaid amounts up to one million four hundred thousand dollars (\$1,400,000). The State will provide WMNH with twenty-four (24) hours notice before drawing on the financial assurance and, if such failure is cured within the 24 hours to the satisfaction of the State, the State will not draw upon the financial assurance. WMNH's obligation to maintain and to timely renew financial assurance under this paragraph shall continue until WMNH makes full payment of \$1.4 million to third parties or to the State in accordance with the provisions of this Decree, after which such obligation shall cease.

c. Replacement Project. If the UNH Landfill Gas-To-Energy Project becomes infeasible at any time prior to its completion or UNH costs or obligations do not reach a total of one million two hundred thousand dollars (\$1,200,000) within three (3) years of the effective date of this Decree, whichever occurs first, WMNH shall pay within thirty (30) days any unpaid amounts up to one million two hundred thousand dollars (\$1,200,000) to the State, as set forth in paragraph 9. Alternatively, WMNH may request, with concurrence by UNH, a reasonable extension of time if it can be

shown that timely completion of the Project can be expected, which approval shall be at the discretion of the State, and which approval shall not be unreasonably withheld. If such request is not submitted or the State denies the request, WMNH may, alternatively, submit a request for State approval of a replacement SEP, which approval shall not be unreasonably withheld.

11. Local Supplemental Environmental Projects. In exchange for a credit of up to two hundred thousand dollars (\$200,000) towards any penalty that might be imposed under paragraph 8 herein, WMNH agrees to fund various local air pollution-related projects, consistent with paragraph 11.a.

a. Local Air Pollution Projects. WMNH shall fund, and the State shall administer, other local air pollution-related projects in the cities of Rochester and Dover, such as clean fleets programs, renewable energy projects, energy efficiency projects, school indoor air quality studies, or other environmentally related programs within the cities' jurisdictions, after State approval of proposed projects and budgets, up to a total amount of one hundred thousand dollars (\$100,000) for the city of Rochester, and one hundred thousand dollars (\$100,000) for the city of Dover. The State shall invite the cities of Rochester and Dover to submit written applications describing proposed projects and budgets and, within forty-five (45) days after notification by the State of approval of a particular project, WMNH shall issue payments directly to the cities for funding the approved projects in the form of check(s) or electronic transfers, with simultaneous notice to the State of such payments. WMNH shall condition the payment upon the cities' agreement to provide documentation to the State that the proposed projects will be implemented with the funding provided by WMNH and that such documentation will be provided to the State within sixty (60)



days of completion of the projects. In the event that the cities fail to submit SEP proposals or the State does not deem all or a portion of the proposals to be approvable within three (3) years of the date of this Decree, the State shall notify WMNH that the remaining portion of the civil penalty allocated to this purpose shall be immediately paid to the State in accordance with paragraph 9 herein. The cities shall have no claim to the funds as third party beneficiaries and the State's approval of proposed local air pollution projects shall be at the discretion of the State.

#### **E. COMPLIANCE-RELATED PROJECTS**

12. Annual Odor Control Evaluation: Beginning one hundred twenty (120) days from the effective date of this Decree, and on an annual basis thereafter, WMNH shall submit to the State an Odor Control Evaluation report, certified by a professional engineer licensed in New Hampshire. This report shall include the following: (a) an evaluation of methods used to control working face, operational and landfill gas odors from Turnkey Landfill; (b) an evaluation of the landfill gas collection system for each landfill (TLR-I, II and III), including an analysis of well fields, header systems, blower systems, system coverage, gas generation parameters and projection of landfill gas recovery rates; (c) identification of deficiencies or issues surrounding working face/trash odors and landfill gas odors and proposed recommendations and solutions for minimizing such odors; and (d) identification and evaluation of all citizen odor complaints received by the State and/or WMNH during the evaluation period to address trends, causes and proposed solutions. Within sixty (60) days of the date of this Decree, WMNH shall submit a request to amend its Solid Waste Permit for the Turnkey Landfill for incorporation of the requirement contained herein for an Annual Odor Control Evaluation. Upon incorporation within the Solid Waste Permit, this requirement shall become a permit obligation and shall cease only upon approval by the State through amendment to the

Solid Waste Permit.

13. Leachate Recirculation: WMNH shall immediately cease spraying of landfill gas condensate and shall conduct all landfill condensate recirculation activities below the surface of the landfill. Within sixty (60) days of the effective date of this Decree, WMNH shall submit an application to amend accordingly the operating plan under the Solid Waste Permit for the Landfill in order to address odors related to surface spraying of landfill leachate.

14. Sludge Acceptance: Within sixty (60) days of the effective date of this Decree, WMNH shall submit an application to amend the operating plan under the Solid Waste Permit for the Landfill to specify procedures for reducing odors from municipal wastewater treatment plant sludge received by the Landfill.

15. Landfill Gas Control: WMNH shall increase existing landfill gas control capacity by installing a utility flare at the Landfill no later than thirty (30) days following the effective date of this Decree and an ultra-low emission (ULE) flare at the Landfill no later than one hundred eighty (180) days following the effective date of this Decree. The utility flare shall be operational within thirty (30) days of installation and the ULE flare shall be operational within sixty (60) days of installation and shall comply with all State and federal air pollution requirements, including PSD/NSR programs. WMNH has submitted to the State physical design, operating parameters, performance specifications, PSD/NSR netting analysis and air dispersion modeling for compliance demonstration purposes for each flare for purposes of State approval and for incorporation into federally enforceable permits. WMNH shall comply with State requests for additional information and any conditions placed upon approval for installation. WMNH shall submit quarterly reports to the State beginning thirty (30) days of the effective date of the Decree on the status of installation and operation of the flares until the flares have been incorporated into federally enforceable permits.

16. Landfill Gas Collection, Monitoring and Reporting:

a. WMNH shall conduct ambient air monitoring of Hydrogen Sulfide emissions in accordance with the protocols established under Exhibit B attached hereto, or any alternative protocols agreed to by the State, through at least September 2006. After September 2006, the State will assess the need to continue the ambient monitoring based upon the criteria set forth in paragraph 2 of Exhibit B.

b. WMNH shall comply with all requirements set forth in Exhibit C attached hereto and shall amend applicable permits, plans and procedures, as necessary, to implement the requirements of Exhibit C.

c. Except as set forth below, WMNH shall conduct for TLR I, II and III, on a monthly basis, landfill gas sulfur monitoring in accordance with test protocols submitted by WMNH and approved by the State. Alternatively, WMNH may purchase, install and operate on a permanent and continuous basis Gas Turbine Plant equipment that will test and record the Hydrogen Sulfide content of incoming landfill gas fired at the Turbine Plant and shall comply with all provisions set forth in Exhibit D attached hereto. WMNH shall report all recorded results from such equipment to the State under State-approved procedures upon request by the State. If WMNH does install and operate such equipment, WMNH need only conduct landfill gas sulfur monitoring at TLR I and II on a semi-annual basis, and need not conduct landfill gas sulfur monitoring at TLR III.

d. WMNH shall coordinate with the State regarding the format for submissions under this paragraph.

17. Facility-Wide Emission Cap: Within ninety (90) days of the effective date of this Decree, WMNH shall submit to the State in accordance with Exhibit E attached hereto a

temporary permit application for establishment of a Facility-Wide Emission Cap for annual emissions of CO and SO<sub>2</sub> at the Turnkey Landfill. The emissions cap shall become effective no later than two hundred and seventy (270) days after the ULE flare, installed pursuant to paragraph 15 of this Decree, becomes operational. No later than ninety (90) days after issuance of such temporary permit for the emissions cap and issuance of the temporary permits described in paragraph 18 herein, WMNH shall submit a revised Title V permit application to incorporate all necessary revisions with regard to all air emissions from the Landfill into the federally enforceable operating permit issued under RSA 125-C and Title V of the Clean Air Act.

18. Short-Term Air Permit Limitations: Within sixty (60) days of the effective date of this Decree, WMNH shall submit, in accordance with Exhibit E, a temporary permit application for amendment to permit limitations for short-term emissions of CO, SO<sub>2</sub> and PM. WMNH shall be deemed in compliance with short-term limits of CO, SO<sub>2</sub> and PM after the effective date of this Decree and prior to issuance of amended temporary permit terms so long as the application is timely submitted and as long as the proposed amended permit limits are not exceeded.

19. Emission-Based Fees: Within sixty (60) days of the effective date of this Decree, WMNH shall submit updated emissions reports for SO<sub>2</sub> for calendar years 1999-2002 and shall pay twelve thousand thirty nine dollars and fifty cents (\$12,039.50) as emission-based fees, plus interest, for previously under-reported emissions.

20. Stipulated penalties. WMNH shall pay stipulated penalties of one hundred dollars (\$100) per day for failure to meet the deadlines specified in paragraphs 12 through 19 of this Decree. Such stipulated penalties shall accrue immediately upon failure to meet such deadlines and shall be paid to the State within thirty (30) days of the date upon which WMNH cures the deficiency. The terms of payment shall be consistent with paragraph 9 of this Decree.

The State may, in its discretion, waive payment of stipulated penalties if WMNH demonstrates to the State's satisfaction that a specific deadline cannot be met for reasons beyond WMNH's control, which reason shall not include financial inability. The demonstration must be made in writing and submitted to the State for consideration. If WMNH disputes the State's decision not to waive payment of all or part of a stipulated penalty, WMNH shall request the State to hold the disputed stipulated penalty payment pending resolution of the matter. If the parties cannot resolve the dispute by mutual agreement within thirty (30) days of WMNH's request for waiver of the penalty, the State may deposit the penalty payment unless WMNH files a motion with the Court for resolution of the disagreement on whether stipulated penalties were required to be waived. If the Court resolves the dispute in WMNH's favor, the payment shall be returned to WMNH. If the Court resolves the dispute in the State's favor, the State shall deposit the payment. In any State action to enforce the deadlines established in this Decree, WMNH may raise as a defense to such action that the delay was caused by circumstances beyond WMNH's control, which circumstances shall not include WMNH's financial inability to perform the obligations set forth in this Decree. The parties may agree to extend the deadlines set forth herein to the extent that delays are caused by circumstances beyond WMNH's control and such agreement shall be treated as a non-material modification to the Consent Decree.

#### **F. EFFECT OF AGREEMENT**

21. This Decree and all obligations assumed hereunder shall apply to and be binding upon Waste Management of New Hampshire, Inc. and its successors and assigns.

22. The New Hampshire Department of Environmental Services, by and through the Attorney General, releases and covenants not to sue or take any administrative action against WMNH and its successors and assigns for the violations alleged in the Petition or for violations of environmental statutes and rules at the Landfill that could have been alleged on the basis of

specific, material facts alleged in the Petition, through the effective date of this Decree. The State expressly reserves the right to sue or to bring administrative action against WMNH and its successors and assigns with regard to the following: (a) any action concerning matters referenced in paragraph 16.a. and Exhibit B of this Decree; and (b) any action to enforce the terms of this Decree.

23. The parties acknowledge that WMNH, its successors and assigns, have a continuing obligation to remain in compliance with all applicable federal and state laws, rules and permits relating to the Landfill. The State reserves the right to bring any administrative, civil and criminal action for any air, solid waste, groundwater or other environmental violation arising after the effective date of the Decree, with the exception of exceedances of short-term emission limits as set forth in paragraph 18 herein. This reservation of rights includes, but is not limited to, violations that occur in connection with the terms of this Decree, and WMNH performance of work referenced in this Decree. WMNH reserves any and all defenses with regard to such State claims.

24. It is the intention of the parties that this Decree be entered and enforced pursuant to all the power of the Court at law and equity as an Order of the Court. Once the Decree is entered as an Order by the Court, WMNH acknowledges that any violation of the Decree or the agreements reflected herein may be cause for WMNH being adjudged in contempt of court and hereby waives any objection to jurisdiction if such remedy is sought by the State.

25. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon any further breach or default.

26. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing between WMNH and the State, through the

Attorney General's Office, and filed with the Court. Such modifications become effective when approved by the Court. The parties may agree in writing without Court approval on non-material modifications, such as modifications to reporting obligations or schedules established by this Decree with no effect on statutory, regulatory or permitted obligations. Such non-material modifications become effective upon execution by both parties.

27. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

28. This Decree shall be construed in accordance with the laws of the State of New Hampshire.

29. This matter may be closed after ninety (90) days of the Court's approval of this Decree. The Court shall retain jurisdiction of this matter for purposes of enforcement of the Decree and shall reopen the case upon motion by either party for enforcement of its terms.

30. This Decree shall be terminated upon WMNH's completion of all obligations set forth in the Decree and upon completion of all agency actions in conformance with the terms of the Decree. Upon WMNH's completion of all of the requirements set forth under this Consent Decree, WMNH shall submit a written certificate of completion to the State, setting forth all requirements in the Decree for which WMNH has achieved full compliance and seeking assent by the State that the Decree may be terminated. If the State assents, the parties shall file a joint motion with the Court requesting that the Court terminate the Decree. If the State does not assent and the parties are unable to resolve any disagreement, WMNH may file a motion with the Court seeking enforcement of the termination provision.

CONSENTED TO:

THE STATE OF NEW HAMPSHIRE

KELLY A. AYOTTE  
ATTORNEY GENERAL

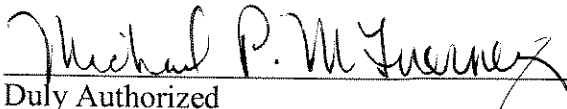
By:



Maureen D. Smith, Senior Ass't Attorney General  
Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301  
Tel: (603) 271-3679

WASTE MANAGEMENT OF  
NEW HAMPSHIRE, INC.

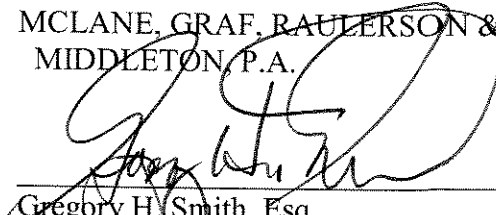
By:



Duly Authorized

MCLANE, GRAF, RAULERSON &  
MIDDLETON, P.A.

By:



Gregory H. Smith, Esq.  
McLane, Graf, Raulerson & Middleton, P.A.  
15 North Main Street Concord, NH 03301  
Tel: (603) 226-0400

The Court finds that this Consent Decree is a reasonable and fair settlement of the State's-alleged violations and adequately protects the public interest. Dated and entered this 28 day of January, 2006.

SO ORDERED

Dated: 2/28/06

  
Presiding Justice

Peter H. Fauver  
Presiding Justice



**Exhibit A**

**Petition for Preliminary and Permanent  
Injunction and Civil Penalties**

**Filed Separately**

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

State of New Hampshire  
Department of Environmental Services

v.

Waste Management of New Hampshire, Inc.

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION  
AND CIVIL PENALTIES**

NOW COMES the State of New Hampshire Department of Environmental Services, by and through the Office of the Attorney General (“the State”), and petitions this Court for preliminary and permanent injunctive relief and assessment of civil penalties against Waste Management of New Hampshire, Inc. (“WMNH”) as follows:

**A. INTRODUCTION**

1. This is an action against WMNH for violations of federal and state air pollution control statutes and rules, state solid waste statutes and rules, and state groundwater protection statutes and rules related to activities at, and permits issued to, the Turnkey Recycling and Environmental Enterprise Facility or “Turnkey Landfill” in Rochester, New Hampshire. The State petitions this Court for injunctive relief and civil penalties under the authority of RSA 125-C:15, II, RSA 125-I:8, II, RSA 149-M:15, IV, and RSA 485-C:19, II.

**B. PARTIES**

2. The State petitioner, New Hampshire Department of Environmental Services or “DES,” with principal offices at 29 Hazen Drive, Concord, New Hampshire 03301, is the state agency responsible for the administration and enforcement of federal and state statutes and rules relating to control of air pollution, including the Clean Air Act, 42 U.S.C. 7201 *et seq.*, the New

Hampshire Air Pollution Control Act, RSA 125-C, and the Air Toxic Control Act, RSA 125-I, and rules adopted thereunder at N.H. CODE of ADMIN. RULES Chapter Env-A 100, *et seq.* (hereinafter “Env-A\_\_\_\_”), solid waste disposal, including the Solid Waste Management Act, RSA 149-M, and rules adopted thereunder at Env-Sw 100, *et seq.* (formerly Env-Wm 100, *et seq.*) (hereinafter “Env-Sw\_\_\_\_”), and groundwater protection, including the Groundwater Protection Act, RSA 485-C.

3. Respondent WMNH is a Connecticut corporation registered to do business in New Hampshire with a mailing address of P.O. Box 7065, Gonic, NH 03839.

4. The Court has jurisdiction over this matter pursuant to RSA 125-C:15, II, RSA 125-I:8, II, RSA 149-M:15, IV, and RSA 485-C:19,II. Venue is proper in this county because the facility in question is located in Rochester, New Hampshire.

### **C. FACTUAL ALLEGATIONS**

#### **i. General**

5. WMNH owns and operates a municipal solid waste facility known as the Turnkey Recycling and Environmental Enterprise Facility or Turnkey Landfill, which is located at 30 Rochester Neck Road in Rochester, New Hampshire (hereinafter “facility”).

6. The facility consists of approximately 1,216 acres, 200 acres of which are being used for the disposal of municipal solid waste pursuant to DES-issued solid waste and air permits.

7. Landfilling at the facility began in 1979 when the first phase (TLR-I) of the facility was constructed.

8. TLR-I accepted waste until 1992 and holds approximately 2,800,000 tons of waste on 49 acres.

9. The second phase (TLR-II) of the facility accepted waste from June 1990 until June 1997 and holds approximately 3,800,000 tons of waste on 50 acres.

10. Both TLR-I and TLR-II have been capped and permanently closed.

11. The third phase (TLR-III) is the currently active portion of the facility. TRL-III began accepting waste in December 1995 and has a capacity of 21,600,000 cubic yards, or 14,500,000 tons of waste covering 100 acres.

12. Most of the waste landfilled at the facility is biodegradable and decomposes, producing landfill gas ("LFG").

13. LFG consists of methane, volatile organic compounds ("VOC") such as methylene chloride and vinyl chloride, and toxic air pollutants such as hydrogen sulfide.

14. LFG is collected by gas extraction wells and headers and conveyed by pipes to flares for combustion or to one of two gas recovery plants. Recovered gas is then used to fuel four engines and two turbines, which generate electricity.

## **ii. Statutes and Regulations**

15. Section 111 of the federal Clean Air Act ("CAA"), 42 U.S.C. § 7411, authorizes the U.S. Environmental Protection Agency ("EPA") to promulgate new source performance standards. EPA has promulgated such standards in title 40 of the Code of Federal Regulations at part 60 ("40 CFR 60").

16. EPA has delegated its authority to implement and enforce a majority of the new source performance standards, including 40 CFR 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills ("Subpart WWW"), to DES. DES implements these standards through permit conditions and Env-A 503.01.

17. Subpart WWW applies to each municipal solid waste landfill that commenced construction, reconstruction or modification on or after May 30, 1991.

18. Subpart WWW applies to the facility.

19. Each municipal solid waste landfill subject to Subpart WWW is required to collect LFG in accordance with 40 CFR § 60.752.

20. The active collection system required by 40 CFR § 60.752 must be designed to handle the maximum expected gas flow rate from the entire area of the landfill, must collect gas from areas where the solid waste has been in place for a period of 5 years or more, if active, or 2 years or more if closed or at final grade, must collect gas at a sufficient extraction rate, and must minimize off-site migration of subsurface gas. All of the collected gas must be routed to a control system or treated for further use.

21. 40 CFR § 60.755 of Subpart WWW sets forth specific methods to be used for determining whether the gas collection system is in compliance with the provisions of 40 CFR § 60.752.

22. Pursuant to Section 165 of the CAA, 42 U.S.C. § 7475, the construction of a major stationary source in an area where the ambient air meets the National Ambient Air Quality Standards ("NAAQS") for one or more of the pollutants emitted by the source requires a permit, known as a Prevention of Significant Deterioration ("PSD") permit.

23. "Major stationary source" is defined at 40 CFR § 52.21(b) as, *inter alia*, a source with the potential to emit two hundred and fifty tons per year or more of any air pollutant.

24. "Construction" is defined at Section 169 of the CAA, 42 U.S.C. § 7479, as including the modification of a source.

25. Any modification of a major source that would result in a significant increase in the emissions of a pollutant as defined in 40 CFR § 52.21(b) is subject to PSD permit requirements as set forth in 40 CFR § 52.21.

26. Pursuant to Section 110(a) of the CAA, 42 U.S.C. § 7410(a), states are required to adopt rules to implement a PSD permit program. The State has done so at Env-A 619, incorporating by reference many of the federal PSD regulations in 40 CFR § 52.21. The State has been delegated authority to enforce the PSD permit program under the CAA.

27. The PSD provisions of the CAA require that extensive reviews of the air quality impacts of the proposed facility take place before a permit can be issued, and that the facility implement best available control technology.

28. Pursuant to Section 502 of the CAA, 42 U.S.C. § 7661a, and RSA 125-C:11, Env-A 609.01(a) requires that, after construction, any source subject to a standard of performance promulgated pursuant to section 111 of the CAA, such as Subpart WWW, or any major source, as that term is defined in Env-A 101, shall apply for a Title V operating permit.

29. Under Env-A 1400, rules adopted pursuant to RSA 125-I:5, V, the owner of any device or process that emits a regulated toxic air pollutant ("RTAP") must demonstrate compliance with the ambient air limits ("AALs") for that RTAP using specified methods.

30. If the compliance demonstration required by RSA 125-I:5 shows that there would be an exceedance of an AAL, then the source is required to submit a compliance plan with a permit application, demonstrating how it would comply with the AALs. For facilities in existence on July 1, 1996, compliance was required three years after the AALs took effect, or by May 8, 2001.

31. Pursuant to Env-A 1450.01(a), hydrogen sulfide (“H<sub>2</sub>S”) CAS # 7783 – 06 – 4, is an RTAP.

32. Pursuant to the State’s Solid Waste Rules, adopted under RSA 149-M, the facility is prohibited from causing air or water pollution in violation of federal or state law (Env-Sw 1002.02(d), (e)) (formerly Env-Wm 2702.02(d), (e)), must be operated and maintained in a manner that controls odors, nuisances and other items to the greatest extent practicable (Env-Sw 1005.01(d)) (formerly Env-Wm 2705.01(d)), must be regularly inspected, monitored and maintained to assure compliance with the permits and the solid waste rules (Env-Sw 1005.01(e)) (formerly Env-Wm 2705.01(e)) and facility operating problems must be corrected, abated and remediated in a timely manner and as directed by DES in conformance with the Solid Waste Rules (Env-Sw 1005.01(f)) (formerly Env-Wm 2705.01(f)).

33. Pursuant to RSA 485-C:6, III, except for discharges of domestic wastewater regulated under RSA 485-A:13 and RSA 485-A:29, no person shall violate ambient groundwater quality standards.

34. RSA 485-C:13 requires the operator of a lined solid waste landfill to obtain a groundwater release detection permit and to monitor groundwater for early detection of any impact to groundwater quality.

### **iii. Facility Permits**

35. On June 28, 1996, WMNH filed a Title V permit application for the facility, in which it acknowledged the applicability of Subpart WWW and that the facility is a major source for carbon monoxide (“CO”) and oxides of nitrogen (“NO<sub>x</sub>”). WMNH revised the application in 1999 and 2001.

36. On March 11, 1997, WMNH was issued permit PO-B-1927 for Landfill Gas-Fired Flare #2, limiting sulfur dioxide (“SO<sub>2</sub>”) emissions to 2.9 lb/hr.

37. On October 29, 1998, WMNH was issued permits PO-B-2010 (formerly PO-B-2000) and -2001 for Solar Centaur Landfill Gas-Fired Turbines #1 and # 2, limiting SO<sub>2</sub> emissions from each turbine to 3.3 lb/hr, CO emissions to 6.3 lb/hr, and particulate matter (PM) emissions to 0.62 lb/hr.

38. When the Solar Centaur Landfill Gas-Fired Turbines #1 and # 2 were originally permitted on February 26, 1997, the facility had the potential to emit more than the major source thresholds for CO and NO<sub>x</sub>, thus making it a major source (or major emitting facility).

39. Based upon information submitted by WMNH, the State did not deem the increase in SO<sub>2</sub> emissions associated with the operation of Turbines #1 and #2 to be significant as that term is defined in 40 CFR § 52.21.

40. On January 6, 2003, WMNH was issued permit TP-B-0482-Amended for Ultra-Low Emissions Landfill Gas-Fired Flare #3, limiting SO<sub>2</sub> emissions to 1.66 lb/hr and 7.3 tons per year (“TPY”).

41. On August 22, 2002, WMNH was issued permit TP-B-0487 for Landfill Gas-Fired Flare #4, limiting SO<sub>2</sub> emissions to 0.3 lb/hr and 1.5 TPY.

42. On May 6, 2004, DES renewed Groundwater Release Detection Permit GWP-198706010-R-003 for TLR-I and TLR-III, which was originally issued to WMNH on October 13, 1997.

43. On December 17, 2004, DES renewed Groundwater Release Detection Permit GWP-198706006-R-004 for TLR-II, which was originally issued to WMNH on June 23, 1993.



#### iv. Site-Specific Facts

44. The Air Resources Division of DES and the EPA conducted a joint compliance inspection of the facility on March 15<sup>th</sup> and 17<sup>th</sup>, 2004. The purpose of the inspection was to evaluate the facility's compliance status with Env-A 100 *et seq.* and the various air permits issued to the facility.

45. At the time of the March 2004 inspection, WMNH was not performing surface methane monitoring at TLR-III on a quarterly basis. WMNH had been monitoring TLR-III on an annual basis since the first quarter of 2000.

46. As a result of the March 2004 inspection, and after consultation with DES, EPA sent WMNH a letter on April 27, 2004, pursuant to Section 114(a)(1) of the Clean Air Act, 42 U.S.C. § 7414(a)(1). In the letter EPA requested, *inter alia*, that WMNH test the LFG for VOCs; resume quarterly monitoring of surface methane on all of TLR-III, as specified in the letter and Subpart WWW, and to notify EPA of the schedule for the quarterly surface monitoring so that EPA could be present to observe and clarify WMNH's annual emission calculations for 2002 and 2003.

47. On May 28, 2004, WMNH submitted comments on the draft Title V permit, and noted that more recent information on the sampling of LFG indicated that sulfur emissions were higher than originally predicted.

48. On June 14, 2004, in response to the May 28, 2004 submittal, DES requested additional information in order to make an informed decision on the need to modify the draft Title V permit. Among other things, DES requested information on the timeline of facility construction and modifications, quarterly amounts of construction and demolition ("C & D")

fines used as daily cover, LFG sampling locations and sampling result details, and documentation supporting landfill gas generation and collection efficiency estimates.

49. While on-site on June 24, 2004, DES observed gas build-up under the temporary geomembrane, causing the geomembrane to expand or “balloon,” on the south slopes of phases 2 through 6 of TLR III. The location of the gas build-up was the same as that noted by personnel of SCS, a consultant of WMNH’s, during a site visit in October 2003 and discussed on page 10 of its July 23, 2004 Odor Evaluation report.

50. On July 29, 2004, WMNH responded to the June 14, 2004 letter and submitted a revised emissions report for calendar year 2003.

51. A Notice of Findings (“NOF”) was issued to WMNH on August 11, 2004 requesting additional information. The NOF is attached as **Attachment A** to this Petition. On September 9, 2004, WMNH responded to the NOF.

52. Based on reports submitted by WMNH, the amount of gas collected at WMNH started to decline in September 2002 and continued to decline through late 2003. The gas collected in 2003 was less than the amount collected in 2002, even though the amount of waste deposited at the facility had increased, and LFG generation models estimate that there should have been an increase in LFG generation.

53. Surface monitoring of methane emissions in June, August, September, November, and December of 2004 resulted in significant methane exceedances at all three landfills.

54. Between December of 2002 and April 13, 2005, DES received and logged 369 odor complaints concerning the facility. Of the 158 odor complaints received during 2004 alone, 122 were described as landfill gas odors (rotting eggs).

55. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 54 herein.

56. Under Section 111 of the CAA, 42 U.S.C. § 7411, WMNH is required to comply with the new source performance (NSPS) standards in 40 CFR 60, Subpart WWW, for municipal waste landfills, and the State has been delegated enforcement authority to enforce compliance with NSPS standards with authority to seek civil penalties of up to \$25,000 for each violation and for each day of a continuing violation under RSA 125-C:15, II, for the following alleged violations.

**i. Insufficient Gas Extraction Rate**

57. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 56 herein.

58. Pursuant to 40 CFR §60.755(a)(3), positive pressure in the wellhead indicates that the gas collection system is not collecting gas at a sufficient extraction rate in compliance with 40 CFR § 60.752(b)(2)(ii)(A)(3).

59. Pursuant to 40 CFR §60.755(a)(3), if positive pressure exists, corrective action must be initiated within 5 calendar days.

60. Pursuant to 40 CFR §60.755(a)(3), if negative pressure cannot be achieved without excessive air infiltration within 15 calendar days of the initial exceedance, the gas collection system must be expanded to correct the exceedance within 120 calendar days of the initial exceedance.

61. Annual, semi-annual, and monthly reports submitted to DES by WMNH for the period covering December 1998 to June 2005 document at least forty-one (41) separate

occasions, mostly at TLR-III, that gas collection wells at the Facility did not exhibit negative pressure and WMNH failed to correct the exceedances within 15 days of identifying each well. WMNH was required to either expand the gas collection system within 120 days of identifying the exceedance or submit an alternative timeline for correcting the exceedance to DES for approval. WMNH failed to meet either requirement, thus violating 40 CFR §§ 60.752(b)(2)(ii)(A)(3) and 60.755(a)(3).

## **ii. Excess Air Infiltration**

62. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 61 herein.

63. Pursuant to 40 CFR § 60.755(a)(5), a municipal solid waste landfill operator is required to identify whether excess air infiltration into the landfill is occurring by monitoring each well monthly for temperature and nitrogen or oxygen as provided in 40 CFR § 60.753(c).

64. Pursuant to 40 CFR § 60.755(a)(5), if a well exceeds a parameter for temperature and nitrogen or oxygen, corrective action must be initiated within 5 calendar days.

65. If correction of the exceedance cannot be achieved within 15 calendar days, then the operator is required to expand the gas collection system to correct the exceedance within 120 days of the initial exceedance.

66. Annual and semi-annual reports submitted to DES by WMNH for the period covering December 1998 to June 2005 document a total of 70 temperature or oxygen parameter exceedances (14 at TLR-I, 10 at TLR-II, and 46 at TLR-III) that were not corrected within 15 calendar days.

67. WMNH was required to either expand the gas collection system within 120 days of identifying the exceedance or submit an alternative timeline for correcting the exceedance to

DES for approval. WMNH failed to meet either requirement, thus violating 40 CFR §§ 60.753(c) and 60.755(a)(5).

### **iii. Excess Surface Methane Emissions**

68. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 67 herein.

69. Regulations at 40 CFR § 60.753(d) requires that the LFG collection system be operated so that the methane concentration is less than 500 parts per million above background at the surface of the landfill.

70. To determine compliance with the surface methane operational standard in 40 CFR § 60.753(d), a municipal solid waste landfill operator is required by 40 CFR § 60.755(c) to conduct quarterly monitoring of surface concentrations of methane along the entire perimeter of the collection area and along a path as specified in 40 CFR §§ 60.753(d) and 60.755(c) for each collection area.

71. Pursuant to 40 CFR § 60.755(c)(4)(i) and (ii), any reading of 500 ppm or more above background at any location shall be recorded as a monitored exceedance with the location marked and recorded, to be followed by corrective action and re-sampling within 10 calendar days of detecting the exceedance.

72. Pursuant to 40 CFR § 60.755(c)(4)(v), for any location where a monitored concentration equals or exceeds 500 parts per million (ppm) 3 times within a quarter, a new well or other collection device must be installed within 120 days of the initial exceedance.

73. In the 2<sup>nd</sup> quarter of 2004, WMNH documented a total of 216 exceedances of the methane standard (14 at TLR-I, 43 at TLR-II, and 159 at TLR-III), 46 of which triggered the need for a new well or other collection device installation pursuant to 40 CFR § 60.755(c)(4)(v).

WMNH failed to address 31 of those areas (3 at TLR-I, 4 at TLR-II, and 24 at TLR-III) within 120 days, thereby violating the operational standard in 40 CFR § 60.753(d) 31 times in the second quarter of 2004.

74. In the 3<sup>rd</sup> quarter of 2004, WMNH documented a total of 153 exceedances of the methane standard (28 at TLR-I, 12 at TLR-II, and 113 at TLR-III), 89 of which triggered the need for a new well or other collection device installation pursuant to 40 CFR § 60.755(c)(4)(v). Of the 89 exceedances triggering the need for corrective action, at least 52 areas (10 at TLR-I, 12 at TLR-II, and 30 at TLR-III) were not corrected by new wells within 120 days, thereby violating the operational standard in 40 CFR § 60.753(d).

75. In the 4th quarter of 2004, WMNH documented a total of 153 exceedances of the methane standard (46 at TLR-I, 6 at TLR-II, and 101 at TLR-III), 61 of which triggered the need for a new well or other collection device installation pursuant to 40 CFR § 60.755(c)(4)(v). New wells were required to be installed no later than April 2, 2005. Based on the reports submitted by WMNH, these areas were not corrected with new wells as required.

#### **iv. Failure to Maintain Cover Integrity**

76. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 75 herein.

77. Pursuant to 40 CFR § 60.755(c)(5), a landfill operator is required to implement a program to monitor for landfill cover integrity and to implement cover repairs as necessary on a monthly basis.

78. During the surface emissions monitoring on the TLR-III facility in the second, quarter of 2004, numerous holes and tears were discovered in the landfill geomembrane cover by WMNH, DES, and EPA. The holes and tears were documented by Weston and Sampson on

behalf of WMNH in the quarterly Surface Emissions Monitoring Reports submitted to DES on August 16, 2004.

79. WMNH's records failed to document that any repairs were made to the cover during the second quarter of 2004 and also note that for 4 months, Phase 7A required additional intermediate cover.

80. WMNH failed to implement a cover integrity program in violation of 40 CFR § 60.755(c)(5).

#### **v. Insufficient Density of Gas Collectors**

81. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 80 herein.

82. Pursuant to 40 CFR § 60.752(b)(2)(ii)(A)(2), a landfill operator is required to install a sufficient density of gas collectors so that gas is collected from each area of the landfill. To determine compliance with this standard, 40 CFR § 60.755(a)(2) provides that the gas collection system should be designed to meet all operational and performance standards.

83. WMNH's failure to meet all operational and performance standards, as alleged in paragraphs 55 through 76, violates 40 CFR § 60.752(b)(2)(ii)(A)(2).

#### **vi. Reporting Violations**

84. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 83 herein.

85. WMNH is required by 40 CFR § 60.757(f) to report all measured monthly parameter exceedances.

86. Based on a review of annual and semi-annual reports submitted by WMNH for the period covering December 1998 to June 2004, and on-site monitoring records, WMNH failed

to include at least 39 monthly parameter exceedances in the annual reports, and failed to report the length of exceedances in the annual reports covering June 2000 through May 2001, June 2001 through May 2002, June 2002 through May 2003, January 2004 through June 2004, and July 2004 through December 2004 in accordance with 40 CFR § 60.757(f).

#### **vii. Monitoring Violations**

87. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 86 contained herein.

88. Pursuant to 40 CFR § 60.756(f), any closed landfill subject to Subpart WWW, that has no monitored exceedances of the operational standard of 500 ppm or more methane in three consecutive quarterly monitoring periods, may skip to annual monitoring.

89. A closed landfill is defined in 40 CFR § 60.751 as a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR §60.7(a)(4).

90. Waste is still being placed in TLR-III so that it is an active landfill which should be monitored on a quarterly basis.

91. Beginning with the first quarter of 2000, WMNH stopped monitoring TLR-III on a quarterly basis, in violation of 40 CFR § 60.756(f).

92. Pursuant to 40 CFR §§ 60.753(c) and 60.755(a)(5), the landfill operator is required to monitor each wellhead for temperature on a monthly basis.

93. A July 2001 report by SCS, a consultant for WMNH, noted that not all wellheads had a sampling port or thermometer as required by 40 CFR § 60.756. By not having the required sampling ports or thermometers, WMNH could not monitor those wells on a monthly basis and violated 40 CFR §§ 60.753(c), 60.755(a)(5), and 60.756.



94. For all violations alleged in sections i through vii above, RSA 125-C:15, II authorizes assessment of civil penalties of up to \$25,000 for each violation and for each day of a continuing violation.

**COUNT II**  
**(Prevention of Significant Deterioration/New Source Review)**

95. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 94 herein.

96. Pursuant to Section 165 of the CAA, 42 U.S.C. § 7475, and RSA 125-C:11, IV, the construction of a major stationary source in an area where the ambient air meets the NAAQS for one or more pollutants emitted by the source requires a permit, known as a PSD permit.

97. “Major stationary source” is defined at 40 CFR § 52.21(b) as, *inter alia*, a source with the potential to emit two hundred and fifty tons per year (“TPY”) or more of any air pollutant.

98. The facility had the potential to emit more than 250 TPY of CO before it applied for a permit to install Turbine #1 and Turbine #2 in 1996, and thus, was a major stationary source.

99. A modification of a major stationary source that would result in a significant net increase in SO<sub>2</sub> emissions of more than 40 TPY is a major modification, as defined in 40 CFR § 52.21(b).

100. Pursuant to 40 CFR § 52.21(a)(2), a major modification of a major source requires a PSD permit.

101. In its application to construct Turbine #1 and Turbine #2 in 1996, WMNH requested that each turbine be permitted at a rate of 3.3 lb/hr of SO<sub>2</sub>, which equates to a maximum of 28.9 tons of SO<sub>2</sub> emissions per year for the two turbines combined.

102. As a result of data provided by WMNH in its May 28, 2004 submittal and in information provided by WMNH thereafter, the LFG sulfur concentration data that were used as a basis for previous permitting determinations were determined to be invalid due to errors in the sulfur sampling methodology.

103. Using corrected data, the potential to emit of the turbines exceeds 40 TPY, requiring a PSD permit.

104. WMNH violated Env-A 619, which incorporates by reference 40 CFR § 52.21, by not applying for a PSD permit to construct Turbine #1 and Turbine #2.

105. Under RSA 125-C:15, II, WMNH is subject to civil penalties of up to \$25,000 for each violation and for each day of a continuing violation.

**COUNT III**  
**(Failure To Demonstrate Compliance with Air Toxics)**

106. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 105 herein.

107. Under RSA 125-I:5 and Env-A 1403, a person or persons having ownership or control of a stationary source that emits one or more RTAPs is required to obtain a permit unless the source's uncontrolled emissions of RTAPs do not exceed AALs at or beyond the compliance boundary. A person may demonstrate compliance with the AALs by air dispersion analysis or such other techniques as the department designates pursuant to rules adopted by the commissioner.

108. Pursuant to RSA 125-I:5, V, Env-A 1403.01 requires all stationary sources or devices that emit a RTAP into the ambient air to comply with the AALs established in Env-A 1400 by performing a compliance determination using one of the methods specified in Env-A 1405.02 through 1405.05.

109. For a source in existence prior to March 5, 1997, if the compliance determination demonstrated any exceedance of an AAL, the source was required under Env-A 1405.03 (effective 3-5-97 to 4-11-03) to submit to DES, prior to May 8, 2000, a permit application with a compliance plan, demonstrating how it would comply with the AALs by May 8, 2001.

110. The facility emits RTAPs, including H<sub>2</sub>S CAS # 7783 – 06 – 4, and WMNH was required to make the compliance demonstration or submit a compliance plan, along with a permit application.

111. On May 28, 2004, WMNH submitted revised modeling results performed in accordance with Env-A 1405, which predicted that its emissions exceed the annual AAL for H<sub>2</sub>S.

112. WMNH has failed to demonstrate compliance with RSA 125-I:5, V, and Env-A 1400.

113. Under RSA 125-I:8, II, WMNH is subject to civil penalties of up to \$25,000 for each violation and for each day of a continuing violation.

**COUNT IV**  
**(Air Permit Emission Limits)**

114. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 113 herein.

115. Under RSA 125-C:11, the construction, modification, or operation of an air pollution source is prohibited unless the owner or operator obtains a permit issued by DES, which may contain emission limits.

116. Permit PO-B-1927, issued to WMNH by DES, limits sulfur dioxide ("SO<sub>2</sub>") emissions for Flare #2 at the facility to 2.9 lb/hr.

117. Based on data reported by WMNH in its revised 2003 annual emissions report, submitted to DES on July 29, 2004, SO<sub>2</sub> emissions from Flare #2 for the month of July were 3.0 lb/hr, exceeding the permit limit.

118. Permit TP-B-0482, issued to WMNH by DES, limits SO<sub>2</sub> emissions for Flare #3 at the facility to 1.66 lb/hr and 7.3 TPY.

119. Based on data reported by WMNH in its revised 2003 annual emissions report, submitted to DES on July 29, 2004, SO<sub>2</sub> emissions from Flare #3 for the month of July exceeded the limit of 1.5 lbs/hr in all 11 months of operation and totalled 12.93 TPY, which exceeded the annual limit of 7.3 TPY.

120. Permit TP-B-0487, issued to WMNH by DES, limits SO<sub>2</sub> emissions for Flare #4 at the facility to 0.3 lb/hr.

121. Based on data reported by WMNH in its revised 2003 annual emissions report, submitted to DES on July 29, 2004, SO<sub>2</sub> emissions from Flare #4 exceeded the limit of 0.3 lb/hr for each of the 5 months it was operated.

122. Permits PO-B-2010 and PO-B-2001, issued to WMNH by DES, limit SO<sub>2</sub> emissions for Turbine #1 and Turbine #2 at the facility to 3.3 lb/hr each.

123. Based on data reported by WMNH in its revised 2003 annual emissions report, submitted to DES on July 29, 2004, SO<sub>2</sub> emissions from Turbine #1 exceeded the limit of 3.3 lbs/hr for the months of January, March, April and May, and SO<sub>2</sub> emissions from Turbine #2 exceeded the limit of 3.3 lbs/hr for the first 6 months of 2003.

124. Permit PO-B-2010 for Turbine #1 limits CO emissions to 6.3 lbs/hr.

125. Based on data reported by WMNH in its revised 2003 annual emissions report, submitted to DES on July 29, 2004, Turbine #1 exceeded the CO emission limit of 6.3 lbs/hr for 8 months.

126. Permits PO-B-2010 and PO-B-2001 for Turbines #1 and #2 limit particulate matter emissions from each turbine to 0.62 lbs/hr.

127. Based on data reported by WMNH in its revised 2003 annual emissions report, submitted to DES on July 29, 2004, Turbines #1 and #2 exceeded the particulate matter limit of 0.62 lbs/hr for 5 months and 8 months, respectively.

128. WMNH failed to comply with the permit limits cited above, violating RSA 125-C.

129. Under RSA 125-C:15, II, WMNH is subject to civil penalties of up to \$25,000 for each violation and for each day of a continuing violation.

**COUNT V**  
**(Emission Reporting)**

130. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 129 herein.

131. Env-A 907.01, adopted pursuant to RSA 125-C, requires WMNH to report annually its SO<sub>2</sub> emissions for each calendar year beginning in 1999 by April 15 of the following year.

132. As a result of data provided by WMNH in its letter dated May 28, 2004 and thereafter, LFG sulfur concentration data used in preparing annual SO<sub>2</sub> emission reports were determined to be invalid due to errors in sulfur sampling methodology, thus causing those emission to be under-reported for the years 1999 - 2002.

133. By not correcting the emission reports for the years 1999 – 2002, WMNH failed to comply with the reporting requirement set forth in paragraph 125, in violation of RSA 125-C.

134. Under RSA 125-C:15, II, WMNH is subject to civil penalties of up to \$25,000 for each violation and for each day of a continuing violation.

**COUNT VI**  
**(Emission-Based Fees)**

135. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 134 herein.

136. RSA 125-C:12 authorizes DES to collect fees from permittees.

137. Env-A 705.01 requires any applicant, owner or operator of a stationary source, area source, or device which requires a temporary permit, state permit to operate, Title V operating permit, or any combination of the foregoing permits pursuant to Env-A 600, to pay annual emission-based fees.

138. WMNH informed DES by letter dated May 28, 2004 that it had been incorrectly performing the monthly sampling of LFG for sulfur emissions, thus under-reporting emissions and underpaying emission fees for the years 1999 - 2002.

139. WMNH violated RSA 125-C and Env-A 705.01 by not paying appropriate fees for the years 1999 – 2002.

140. Under RSA 125-C:15, II, WMNH is subject to civil penalties of up to \$25,000 for each violation and for each day of a continuing violation.

**COUNT VII**  
**(Solid Waste Violations)**

141. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 140 herein.

142. Pursuant to RSA 149-M and Env-Sw 1002 and 1005 (formerly Env-Wm 2702 and 2705), WMNH is required to operate and maintain the facility to prevent air and water pollution and to control odors to the greatest extent practicable.

143. Between December of 2002 and April 13, 2005, DES received and logged 369 odor complaints concerning the facility. Almost one-half of those complaints specified that the odor smelled like landfill gas (rotting eggs), and the remainder complained about other landfill odors.

144. WMNH has violated RSA 149-M and Env-Sw 1002 and 1005 (formerly Env-Wm 2702 and 2705) by not operating and maintaining the facility in compliance with the solid waste rules and by not correcting, abating and remediating facility operating problems in a timely manner.

145. Under RSA 149-M:15, IV, WMNH is subject to civil penalties of up to \$25,000 for each violation and for each day of a continuing violation.

**COUNT VIII**  
**(Groundwater Violations)**

146. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 145 herein.

147. Pursuant to the Groundwater Release Detection Permit No. GWP-198706010-R-003 for TRL-I and TRL-III, and to the Groundwater Release Detection Permit No. GWP-198706006-R-004 for TRL-II, WMNH shall not cause a regulated contaminant as defined in RSA 485-C to be introduced to the ground or groundwater.

148. Methylene chloride concentrations in groundwater sampled at TLR-II groundwater monitoring well GZ-102 were above the Ambient Groundwater Quality Standard ("AGQS") of 5 ug/L from November of 2000 until April of 2004, as reported by WMNH in various monitoring reports.

149. Vinyl chloride concentrations in groundwater sampled at TLR-I groundwater monitoring well MW-07 were above the AGQS of 2 ug/L in April of 2000 and 2001, and in November of 2001 and 2002, as reported by WMNH in various monitoring reports.

150. By allowing regulated contaminants (methylene chloride and vinyl chloride) to be introduced to the groundwater, WMNH violated the terms of Groundwater Release Detection Permit No. GWP-198706010-R-003 for TRL-I and Groundwater Release Detection Permit No. GWP-198706006-R-004 for TRL-II.

151. Under RSA 485-C:19, II, WMNH is subject to civil penalties of up to \$10,000 for each violation and for each day of a continuing violation.

**REQUEST FOR RELIEF**

NOW THEREFORE, the State respectfully requests that this honorable Court grant the following relief:



A. Assess civil penalties to the maximum extent permitted by law against WMNH for the past and continuing violations alleged in this Petition;

B. Grant preliminary and permanent injunctive relief to correct compliance deficiencies and to ensure continued compliance, including but not limited to:

1. Ordering WMNH to design and implement sufficient landfill gas collection, monitoring and reporting systems, including ambient monitoring for regulated air toxics;
2. Ordering WMNH to revise its SO<sub>2</sub> emissions reports and to pay any fees due, plus interest;
3. Ordering WMNH to comply with PSD/NSR permitting requirements;
4. Ordering WMNH to control odors at the facility; and

C. Grant such other relief deemed just and appropriate.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

Dated: February 27, 2006

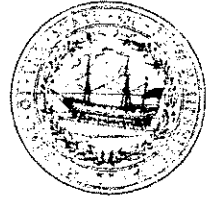
By:



Maureen D. Smith  
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Environmental Protection Bureau  
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The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

June 1, 2005

**EXHIBIT B**

Steve Poggi  
Waste Management of New Hampshire, Inc.  
4 Liberty Lane West  
Hampton, NH 03842

**RE: TREE Ambient Air Monitoring**

Dear <sup>Steve</sup>Mr. Poggi:

The Department of Environmental Services ("DES") hereby approves the protocol for conducting hydrogen sulfide air monitoring dated December 27, 2004, conditioned upon the following revisions:

1. Sampling Locations - WMNH will conduct ambient monitoring at two additional locations, for a total of three locations. DES must pre-approve WMNH's proposed locations for the ambient monitors.
2. Sampling Duration - WMNH will conduct ambient monitoring at three locations for *at least* 12 months. Because WMNH will not agree at this time to DES' request that the monitoring continue beyond 12 months, DES will assess the need to continue ambient monitoring after WMNH has collected 12 months of data with a minimum data collection rate of 75 percent. This assessment will include, but not be limited to, a comprehensive review of the data; a review of citizen complaints during the monitoring period; review of the compliance status at the facility; the results of quarterly surface emissions monitoring; and upcoming construction and filling activities at the facility. If DES requests that the monitoring continue and WMNH does not agree to voluntarily do so, the State reserves all rights to exercise its authority to require that the monitoring continue, regardless of any other agreements reached on compliance at the facility. Similarly, DES understands that WMNH reserves its right to oppose such a request.
3. Sampling Height and Rate - The monitors will be placed so that sampling height is five feet.
4. Calibration - Based upon a discussion that DES had with a representative of Zellweger Analytics (the manufacturer of the Single Point Monitor to be installed by WMNH), DES understands that the SPM comes with a verification card. The verification card has two reference points that can be used to check the accuracy of the Single Point Monitor. According to the representative, the verification card should be used once a week to verify the accuracy of the SPM. If the Single Point Monitor optical sensor readings differ from the verification card by more than 10%, the monitor should be sent back to the manufacturer for calibration.

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095  
Telephone: (603) 271-1370 • Fax: (603) 271-1381 • TDD Access: Relay NH 1-800-735-2964  
DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

5. Notification - WMNH will collect data on a weekly basis (except for the first three weeks, during which sampling will take place daily) and will notify DES of any exceedances of the 24-hour AAL within 24 hours of collecting the data. After six months of data collection, WMNH may submit a request to change the frequency of data collection from weekly to monthly and DES will consider such request based upon the previous data collected. As for the annual AAL, the following protocol will apply: WMNH should calculate a monthly average of all data collected and submit the calculation to DES every month. If every 24-hour value is below the annual standard, then there is no potential that WMNH will violate the annual AAL. However, monthly averages that exceed the annual standard may begin to show a trend towards noncompliance with the annual AAL. Therefore, DES will determine if a trend exists that may affect the ability of WMNH to achieve compliance with the annual AAL (for instance, three consecutive months where the monthly average is above the annual AAL). If DES determines that such a trend exists, it will contact WMNH to determine the extent of corrective action necessary.
6. Submissions - All data (including invalid or missing data/ with explanation) is to be reported to DES within 30 days of the end of the calendar quarter.
7. Sampling Checks - For the first three weeks of monitoring, WMNH will conduct daily checks to ensure that the monitors are operating properly (excluding Sundays and holidays). Thereafter, WMNH will conduct weekly checks of the monitors unless the frequency of data collection is changed in accordance with #5 above. Further, WMNH will develop a regular schedule for conducting the sampling checks and will notify DES no less than three (3) days in advance of a change in such schedule. If WMNH does not develop a regular schedule, then WMNH will notify DES no less than 3 days in advance of conducting the weekly checks.

DES understands that WMNH expects to have the monitors in place by the end of June 2005. Please let me know if there are any delays in this schedule.

Sincerely,



Pamela G. Monroe  
Compliance Bureau Administrator  
Air Resources Division

cc: Maureen D. Smith  
Michael Guilfoxy

## **EXHIBIT C**

### **Landfill Gas Collection and Control System Design Plan**

WMNH shall modify its Landfill Gas Collection and Control System Plan ("GCCS Plan") to include the following provisions, within ninety (90) days of the effective date of the Consent Decree. This Exhibit C does not reflect all of the obligations of WMNH relating to 40 CFR Part 60, Section WWW.

A. Update the provisions relating to the gas collection system wellhead monitoring requirements to include:

1. A standard operating procedure for performing the wellhead monitoring and adjustments. At a minimum, the procedure shall including the following components:

a. All instrumentation calibrations to be done prior to conducting the wellhead monitoring;

b. Monitoring for the following well parameters:

i. Wellhead temperature;

ii. Landfill gas percentage oxygen or nitrogen;

iii. Landfill gas percentage methane;

iv. Wellhead pressure/vacuum;

v. For wells with an orifice plate installed, upstream-orifice and downstream-orifice pressure/vacuum or orifice differential pressure measurements; and

vi. Header-side pressure/vacuum;

c. For all wells with orifice plates installed, calculate landfill gas flow rate from the parameters measured in b.v. above; and

d. Corrective action(s) that will be implemented when a well is not operating in accordance with established performance criteria and the appropriate threshold levels at which this action will be implemented. A corrective action shall be implemented when a well is not operating within those limits set forth in 40 CFR Part 60, Subpart WWW. A corrective action may also be implemented when a well is not operating within performance criteria established by WMNH in the GCCS Plan, the purpose of which is to optimize operation of the wells. The primary objective of each corrective action shall be to restore operating conditions at a well to those that meet the limits set forth in 40 CFR Part 60, Subpart WWW, which shall take precedence over any other established performance criteria in determining compliance with applicable operating standards. In implementing a corrective action, WMNH shall give consideration to the following operating conditions as they exist at a given well:

- i. Percent oxygen is greater than 5 percent as specified in 40 CFR 60.753(c);
    - ii. Temperature is greater than 55°C as specified in 40 CFR 60.753(c);
    - iii. Methane concentration is above performance criteria as established by WMNH in its revised GCCS Plan;
    - iv. Wellside vacuum is outside a range reflective of proper operation (e.g. - well not negative or well vacuum is equal to the header vacuum indicating no or low flow);
    - v. Well has no landfill gas flow;
    - vi. Well liquid level is high and is affecting proper well operation; and
    - vii. WMNH shall establish criteria and methods, including conducting camera inspections, to be used to determine when a well needs monitoring for liquid levels more frequently than once per year;
  2. A description of the sampling instrumentation, calibration procedures including the calibration of the Oxygen and methane analyzer with calibration gas and the calibration of pressure and temperature gauges, and any other quality assurance/quality control provisions for the collection of data, including the recording and downloading of well data;
  3. A provision for conducting annual camera inspections of all landfill gas collection wells that do not have dewatering pumps and for those wells with dewatering pumps that have malfunctioned;
  4. Trends/data analysis of each well;
  5. A provision for implementing the use of a computer based landfill gas well data tracking system to identify wells that are outside the specified operating standards and wells that must be re-monitored within 15 days. The data in the tracking system shall be in such a format that can be provided to DES upon request; and
  6. A provision for notifying DES, verbally and in writing, if weather conditions cause a dangerous condition in specific areas of the landfill that result in WMNH being unable to conduct the monthly wellhead monitoring as required pursuant to 40 CFR 60.755(a)(3). The notification shall include the specific wells that could not be monitored and a justification for not conducting the required monitoring.
- B. Update the provisions related to the surface methane monitoring, which shall, at a minimum, include the following conditions:
1. Surface methane monitoring shall be conducted on a calendar quarter basis following a regular serpentine path, at 30-meter intervals, at all landfills, except

for the active face(s) of TLR-III. TLR-I and TLR-II are closed landfills, and no longer accepting waste, therefore annual monitoring can be conducted if three (3) successive quarters show no exceedances in accordance with 40 C.F.R. 60.756(f);

2. In addition to the above, surface methane monitoring shall be conducted in the areas specified below:

- a. Areas where there are visible cracks or holes in the landfill cover;
- b. The border between capped and uncapped areas of the landfill;
- c. The border between areas with temporary synthetic cover and areas without a temporary synthetic cover;
- d. Areas where seeping water or puddles or pools of water are visible on the surface of the landfill;
- e. Areas where distressed vegetation can be visually observed; and
- f. At the base of gas collection wells, at the top of the gas collection well boot, components connecting the gas collection well to the header, and other structural components protruding from the landfill surface;

3. Surface methane monitoring shall be conducted only at those times that are free of measurable precipitation at the landfill and where the measured wind speed is not above 12 miles/hour as measured by an anemometer positioned in the vicinity where the surface monitoring is being conducted. Should weather conditions make scheduled monitoring dangerous during any quarter at any portion of the landfill, WMNH shall notify DES and EPA regarding any request to postpone the testing. DES shall approve of the postponement once it has determined that conditions are dangerous for monitoring and shall not unreasonably withhold such approval;

4. A provision for notifying DES at least 10 days prior to conducting scheduled surface methane monitoring so that a DES representative can be present to observe and take his or her own measurements. Where weather or other conditions require postponement of scheduled monitoring, WMNH shall provide notice as is reasonably practicable under the circumstances. Verbal notification shall satisfy the requirements of this provision;

5. A provision for submitting to DES a quarterly surface methane monitoring report no later than 60 days after the conclusion of each calendar quarter, which shall include, at a minimum, the following information:

- a. The landfill number and the sequential number of the exceedance;
- b. The location of the exceedance using the New Hampshire coordinate grid system;
- c. A description of the location of the exceedance;
- d. The date, time, and result (ppm) of the initial scan;
- e. A description of the corrective action taken and the date of the repair (if applicable);

- f. The date, time and result (ppm) of the 10 day re-scan (if applicable);
  - g. The date, time and result (ppm) of the 20 day re-scan (if applicable);
  - h. The date, time and result (ppm) of the 30 day re-scan (if applicable);
  - i. The date, time and result (ppm) of any re-scan conducted beyond that of the 30 day re-scan, but within the same calendar quarter (if applicable);
  - j. A description of the proposed repair and the date that it is required to be completed, such date being no later than 120 days after the initial scan (if applicable). If the repair does not include the installation of a new well or other collection device, then in accordance with 40 CFR 60.755(c)(4)(v) an alternative remedy to the exceedance and an alternative timeline for correcting the exceedance may be submitted to DES for approval at least 30 days prior to the end of the 120 day period. If DES approval is delayed such that WMNH cannot implement the alternative remedy within the required time frame, or if DES disapproval is delayed such that WMNH cannot complete construction of a new well during the 120 day period, DES agrees to exercise reasonable enforcement discretion in enforcing this provision; and
  - k. The date that the repair was completed and documentation that demonstrates that the repair remedied the exceedance. The documentation required to demonstrate that a repair remedied each identified exceedance may include a written repair log that is submitted as part of the quarterly surface monitoring report or as part of a construction quality assurance certification report signed and stamped by a professional engineer licensed in the State of New Hampshire. If a repair is not completed by the due date of the quarterly report, then documentation pertaining to the repair shall be provided in the next quarterly surface methane monitoring report. WMNH shall clearly identify that the repair is for a specific exceedance that was noted in a previous quarterly report; and
6. Provisions related to the monthly cover integrity monitoring program to include monitoring methods, recordkeeping and reporting, and corrective action plans. The program shall include monthly inspections of the landfill cover for cover integrity which can be conducted simultaneously with the quarterly surface scan set forth in Section B above, or with the monthly wellhead monitoring set forth in Section A above, for those months when the quarterly surface scan is not performed. A report of the each monthly integrity check including a listing of all deficiencies and the corrective action taken, if applicable, shall be submitted with the quarterly surface methane monitoring report.

## EXHIBIT D

### Landfill Gas Sulfur Monitoring

WMNH may purchase, install, maintain and operate on a permanent and continuous basis an analyzer for measuring and recording the TLR III landfill gas for Hydrogen Sulfide ("H<sub>2</sub>S") concentrations at the Turbine Plant in lieu of monthly landfill gas sulfur monitoring, in accordance with paragraph 16.c. of the Decree. No later than 30 days prior to the installation of the H<sub>2</sub>S monitor, WMNH shall submit to DES a monitoring proposal including the following information:

1. name of the manufacturer, the measurement principle used and a description of the system;
2. diagram showing the system configuration from the probe extraction point at the landfill gas header to the analyzer;
3. description of the data acquisition and the mathematical equations used in calculating the H<sub>2</sub>S concentration; and
4. description of the instrument quality assurance/quality control procedures including the daily calibrations and longer term checks to ensure instrument reliability and accuracy.

DES shall review the information provided and respond within 15 days of receipt of the plan of its approval or approval with conditions. WMNH shall contact DES within 10 days after the analyzer is installed and operational (operational means that at least 7 days of daily calibrations showing calibration drift within vendor specifications has been completed) for a monitoring system review at the Turbine plant.

WMNH shall continue to collect and analyze TLR I and II landfill gas samples for H<sub>2</sub>S on a monthly basis in accordance with State-approved protocols until the monitoring system is fully operational and is successfully collecting data, after which sampling frequency will be reduced from monthly to semi-annually.



**EXHIBIT E**  
**Facility Wide Emission Cap for CO and SO<sub>2</sub>**

*List of Devices Included in Emission Cap*

| <b>Description of Device</b>                                                                  | <b>Maximum Gross Heat Input or Maximum Power Output or Rating</b> |
|-----------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| Landfill Gas Flare No. 1<br>(McGill Environmental - Model No. BFT-10)<br>Installed 1989       | 46.1 MMBtu/hr (input-Higher Heating Value (HHV))                  |
| Landfill Gas Flare No. 2<br>(LFG Specialties - Model No.CF1020I8)<br>Installed 1995           | 46.1 MMBtu/hr (input-HHV)                                         |
| Landfill Gas Reciprocating Engine No. 1<br>(Caterpillar Model No. 3516)<br>Installed 1992     | 9.4 MMBtu/hr (input-HHV)                                          |
| Landfill Gas Reciprocating Engine No. 2<br>(Caterpillar Model No. 3516)<br>Installed 1992     | 9.4 MMBtu/hr (input-HHV)                                          |
| Landfill Gas Reciprocating Engine No. 3<br>(Caterpillar Model No. 3516)<br>Installed 1992     | 9.4 MMBtu/hr (input-HHV)                                          |
| Landfill Gas Reciprocating Engine No. 4<br>(Caterpillar Model No. 3516)<br>Installed 1993     | 9.4 MMBtu/hr (input-HHV)                                          |
| Emergency Generator at Leachate Treatment Plant<br>Installed 1992                             | 368 HP                                                            |
| Solar Centaur Landfill Gas Turbine No. 1<br>Installed 1997                                    | 46.2 MMBtu/hr (input-HHV)                                         |
| Solar Centaur Landfill Gas Turbine No. 2<br>Installed 1997                                    | 46.2 MMBtu/hr (input-HHV)                                         |
| Leachate Treatment Plant Landfill Gas-Fired Boiler                                            | 2.23 MMBtu/hr (input-HHV)                                         |
| Ultra Low Emissions Flare No. 3 (John Zink Company - Model No.ZULE130X40LF)<br>Installed 2002 | 128.7 MMBtu/hr (input-HHV)                                        |
| Portable Flare No. 4 (LFG Specialties, Inc.)<br>Installed 2002                                | 26.4 MMBtu/hr (input -HHV)                                        |
| Portable Emergency Generator (Caterpillar XT125-3304)                                         | 141 KVA or 113 KW prime power                                     |
| Insignificant Activities (Combustion Devices)                                                 | Title V Permit Application                                        |
| Landfill Gas Flare No. 5 (Utility Flare) 2006 Installation                                    | 105.6 MMBtu/hr                                                    |
| Landfill Gas Flare No. 6 (ULE Flare) 2006 Installation                                        | 115.5 MMBtu/hr                                                    |

*Purpose and Implementation of the Facility Wide Emission Cap*

The purpose and intent of the Facility Wide Emission Cap on the above devices is to ensure that the installation and continued operation of these devices results in emissions of carbon monoxide (CO) and sulfur dioxide (SO<sub>2</sub>) that are below the applicability threshold of the federal Prevention of Significant Deterioration (PSD) program as implemented in New Hampshire in accordance with state rules at Chapter Env-A 619. Provided that CO and SO<sub>2</sub> emissions from the above devices remain below 250 tons for each pollutant after the effective date of the Facility-Wide Emissions Cap set forth in Paragraph 17 of the Consent Decree, in any consecutive rolling 12-month period (as determined as of the first of each month for the prior 12-month period), it has been determined that the installation and operation of the above devices are not subject to the PSD program. WMNH reserves the option of installing additional control equipment or gas-conditioning equipment to ensure that these caps are met in the future, provided that WMNH first seeks either a permit under Env-A 600 or obtains review and concurrence from DES that a permit is not required before installation. Implementation of this facility-wide emission cap shall eliminate the need for device specific emission caps on a 12-month basis. However, short term emission limits, i.e. hourly limits, may be required for the purpose of compliance with National Ambient Air Quality Standards (NAAQS) or other applicable requirements.

*Emissions Above the Facility Wide Emission Cap from the Listed Existing Devices*

If at any point after the effective date of the facility-wide emission cap the emissions of CO and SO<sub>2</sub> from the above listed existing devices exceeds the 250-ton limit, the company shall submit for review and approval a PSD permit application for CO and SO<sub>2</sub> for Turbines 1 and 2.

*Installation of New Equipment*

At any future point, WMNH may add additional equipment to the above list without triggering PSD review, provided that emissions from the new equipment combined with existing listed equipment remain below 250 tons for CO and SO<sub>2</sub>. The installation of such new equipment shall be subject to review and permit requirements of Env-A 600, as warranted.

If the installation of new equipment results in emission increases of CO and SO<sub>2</sub> above the caps, the new equipment shall be subject to PSD review, regardless of its emission levels. The existing above-listed equipment shall not be subject to PSD review provided emissions from that equipment remain below 250 tons for CO and SO<sub>2</sub>.

**EXHIBIT F**  
**IRREVOCABLE LETTER OF CREDIT FORM**

ISSUING BANK:

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER:

DATE OF ISSUE: FEBRUARY \_\_, 2006

APPLICANT: REFERENCE NUMBER:

WASTE MANAGEMENT OF NEW HAMPSHIRE, INC.

90 Rochester Neck Road

Rochester, NH 03839

BENFICIARY

COMMISSIONER

STATE OF NEW HAMPSHIRE

DEPT. OF ENVIRONMENTAL SERVICES

29 HAZEN DRIVE

CONCORD, NH 03301

ATTN: AIR RESOURCES DIVISION OR SOLID WASTE BUREAU

AMOUNT/CURRENCY

USD \$1,400,000.00

ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 US DOLLARS

DATE AND PLACE OF EXPIRATION

FEBRUARY \_\_, 2007 AT OUR COUNTERS

DEAR COMMISSIONER:

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ IN YOUR FAVOR AT THE REQUEST AND FOR THE ACCOUNT OF WASTE MANAGEMENT OF NEW HAMPSHIRE, INC., 90 ROCHESTER NECK ROAD, ROCHESTER, NEW HAMPSHIRE 03839, UP TO THE AGGREGATE AMOUNT OF USD 1,400,000.00 (ONE MILLION FOUR HUNDRED THOUSAND US DOLLARS) SUBJECT TO ADJUSTMENT FOR PAYMENTS AND DRAWS AS SET FORTH HEREIN, AVAILABLE TO BE DRAWN BY THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES (BENEFICIARY OR STATE) IN ACCORDANCE WITH THE TERMS HEREOF AND BY YOUR SIGHT DRAFT WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. YOUR SIGHT DRAFT BEARING REFERENCE TO THIS IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_; AND

2. A STATEMENT SIGNED BY THE COMMISSIONER OR ASSISTANT COMMISSIONER OF THE BENFICIARY OR ITS ATTORNEY OR SUCCESSOR AGENCY READING AS FOLLOWS: I CERTIFY THAT THE AMOUNT OF THE DRAFT IS PAYABLE PURSUANT TO LEGAL OBLIGATIONS ESTABLISHED UNDER A CONSENT DECREE ENTERED BY THE STATE AND THE APPLICANT AND APPROVED BY THE STRAFFORD COUNTY, NEW HAMPSHIRE SUPERIOR COURT ON \_\_\_\_\_, 2006, ATTACHED HERETO AS ATTACHMENT 1, IN THAT ONE OR MORE OF THE FOLLOWING HAS OCCURRED:

A. APPLICANT HAS FAILED TO TIMELY PAY OR TO REIMBURSE AMOUNTS OWING UNDER PARAGRAPH 10 OF THE CONSENT DECREE;

B. APPLICANT HAS FAILED TO MAKE TIMELY PAYMENT OF AMOUNTS OWING UNDER PARAGRAPH 11 OF THE CONSENT DECREE; OR

C. APPLICANT HAS NOT RENEWED THIS LETTER OF CREDIT OR OTHERWISE PROVIDED FINANCIAL ASSURANCE AS REQUIRED UNDER PARAGRAPH 10 OF THE CONSENT DECREE.

THIS LETTER OF CREDIT IS EFFECTIVE AS OF FEBRUARY\_\_\_\_, 2006 AND SHALL EXPIRE ON FEBRUARY \_\_\_\_, 2007 (THE EXPIRATION DATE), BUT SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR AN ADDITIONAL PERIOD OF ONE YEAR FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE UNTIL THE BENEFICIARY HAS NOTIFIED THE ISSUING BANK THAT APPLICANT'S OBLIGATION TO MAINTAIN AND RENEW THIS LETTER OF CREDIT HAS CEASED PURSUANT TO PARAGRAPH 10.c. OF THE CONSENT DECREE, UNLESS AT LEAST ONE HUNDRED TWENTY (120) DAYS PRIOR TO SUCH DATE, ISSUING BANK NOTIFIES THE BENEFICIARY, ITS ATTORNEY (I.E., THE OFFICE OF THE ATTORNEY GENERAL, 33 CAPITOL STREET, CONCORD, NH 03301), AND THE APPLICANT IN WRITING BY CERTIFIED MAIL OR OVERNIGHT COURIER AT THE ABOVE ADDRESSES THAT ISSUING BANK ELECTS NOT TO RENEW THIS LETTER OF CREDIT FOR SUCH ADDITIONAL ONE-YEAR PERIOD. IF THIS LETTER OF CREDIT IS NOT AUTOMATICALLY RENEWED NOR OTHERWISE REPLACED BY THE APPLICABLE EXPIRATION DATE, THEN THE BENEFICIARY MAY DRAW ITS DRAFT IN THE THEN APPLCIABLE AMOUNT AT SIGHT ON THIS IRREVOCABLE STANDBY LETTER OF CREDIT.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED UPON PRESENTATION AND DELIVERY OF THE DOCUMENTS AS SPECIFIED TO THE DRAWEE PRESENTED

AT THIS OFFICE ON OR BEFORE THE CLOSE OF BUSINESS ON THE EXPIRATION DATE, OR AS AUTOMATICALLY EXTENDED IN ACCORDANCE HEREWITH.

Page 3 of 3

THIS LETTER OF CREDIT IS SUBJECT TO UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500, AND, TO THE EXTENT NOT INCONSISTENT THEREWITH, THE STATE OF NEW HAMPSHIRE UNIFORM COMMERCIAL CODE, N.H. RSA CHAPTER 382-A, ARTICLE 5.